

PERSONAL INJURY**MEDICAL MALPRACTICE**
Wrongful Death

VERDICT: Defense.

CASE/NUMBER: Shauna Greene, Anthony Greene v. The Regents of the University of California, Mary Kerr, M.D. / SC095284.

COURT/DATE: Los Angeles Superior Santa Monica / Jan. 14, 2010.

JUDGE: Hon. Jacqueline A. Connor.

ATTORNEYS: Plaintiff - David Bigelow, Amy F. Solomon (Girardi & Keese, Los Angeles).

Defendant - N. Denise Taylor (Taylor Blessey, LLP, Los Angeles) for Dr. Kerr.

MEDICAL EXPERTS: Plaintiff - Joel Kessler, M.D., OB/GYN, Santa Monica.

Defendant - Richard Boles, M.D., medical genetics, Los Angeles; Phillippe Friedlich, M.D., neonatology, Los Angeles; David A. Miller, M.D., perinatology, Los Angeles; Guy Young, M.D., pediatric hematology/oncology, Los Angeles.

FACTS: On Sept. 11, 2006, at 10:45 p.m., defendant Dr. Mary Kerr admitted plaintiff Shauna Greene, 43, to UCLA Medical Center for possible induction of labor.

On Sept. 12, at 12 a.m., an epidural was placed, and at 1 a.m., Kerr ruptured the membranes and placed an intrauterine pressure catheter (IUPC). A six-minute deceleration occurred, during which time an internal fetal scalp electrode was placed. The fetal heart rate returned to a reactive tracing.

At 1:20 a.m., there was another fetal heart rate deceleration that did not return to baseline. Kerr believed that this might be maternal heart rate, and replaced the fetal scalp electrode. After confirming the fetal heart rate was low by ultrasound, Kerr ordered a c-section at approximately 1:28 a.m. The incision occurred at 1:35 a.m., and the baby was delivered, by vacuum extraction x2, at 1:39 a.m.

The baby was born limp and pale with Apgars of 0, 0, and 2, and was found to have a hematocrit at birth of 22, suggesting that he had lost at least half of his blood volume in utero. The baby had persistent hypotension and kidney failure, and despite an essentially normal neurological examination, baby had two abnormal EEGs and an MRI suggestive of hypoxic ischemic encephalopathy.

At day two of life, Shauna and Anthony Greene elected to discontinue life support. The Greenes filed suit against the hospital and Kerr. The hospital was dismissed prior to trial.

PLAINTIFF'S CONTENTIONS:

The Greenes contended that Kerr was negligent in placement of the IUPC and the vacuum, which together caused a fetal bleed, and that she was negligent in failing to timely perform the c-section. The Greenes also contended that Kerr's negligence caused irreversible multi-organ failure, and that the baby would have died if the parents had not withdrawn life support.

Joel Kessler, M.D., OB/GYN, opined that Kerr was negligent in improperly placing the IUPC and failing to recognize and remove it, causing placental separation; failing to timely order a crash c-section following a fetal heart rate deceleration; failing to perform c-section under general rather than epidural anesthesia; and improperly placing vacuum extractor at time of c-section. Kessler further opined that the improper placement of the IUPC and vacuum caused a fetal bleed, which caused hypoxic-ischemic encephalopathy and resultant multi-organ system failure. He testified that if the parents had not withdrawn life support, the baby would have died anyway within the first six weeks of life. He also testified that based on genetics testing that he ordered on the parents blood after the defense experts depositions, the baby did not have a Factor VII clotting deficiency as opined by the defense.

DEFENDANT'S CONTENTIONS: Kerr contended that she met the standard of care in all respects; and that the fetal heart rate deceleration that necessitated the crash c-section, and the baby's condition at birth were the result of an intrauterine bleed that likely started before the mother came to the hospital in early labor, as a result of a congenital Factor VII clotting disorder.

The defense also contended that Greenes' case was not properly a wrongful death action, in that the cause of death was the parents' elective withdrawal of life support and that the baby would have survived had the parents not made that decision.

Philippe Friedlich, M.D., neonatology, testified that the fetal heart rate deceleration was by an intrauterine bleed that began as a result of a congenital clotting disorder; that because the baby was born with less than half of his blood volume and the blood was in the subglaleal space on autopsy, the bleed had to have started at least three or more hours before the delivery, and the vacuum was not a cause of the bleed. Further, that the baby would have lived had the parents not withdrawn life support at age two days.

Richard G. Boles, M.D., clinical genetics, testified that the baby's bleed was the result of a genetic Factor VII clotting disorder; that the parents' negative test for the Factor VII gene did not rule this out, because the Factor VII gene is only one gene that is required for Factor VII. He further testified concerning other abnormalities pointing to an underlying genetic problem with the

baby based on the prenatal triple marker testing, and also the autopsy findings.

Guy Young, M.D., pediatric hematology/oncology, testified that clinically, the baby had a Factor VII clotting disorder, as evidenced by his prolonged prothrombin times and normal PTT's.

David A. Miller, M.D., OB/GYN, maternal fetal medicine, testified that there was no evidence of a placental separation or any improper IUPC placement; the timing of the c-section was within the standard of care; the epidural anesthesia was appropriate and was not the OB's decision; and the vacuum was placed appropriately.

JURY TRIAL: Length, nine days; Poll, 12-0; Deliberation, one hour.

SETTLEMENT DISCUSSIONS: The Greenes made a C.C.P. section 998 demand of \$245,000.

The defendants made a C.C.P. section 998 offer of \$29,999.

RESULT: The jury returned a verdict for Kerr.

FILING DATE: Sept. 12, 2007.